in a theater so as to cause a panic and a jam in which several persons were injured. Among other cases cited to this point are *Commonwealth* v. *Hawkins,* 157 Mass. 551, where a conviction of assault with a dangerous weapon was sustained under facts showing that the prisoner upon a dark night in a reckless and grossly negligent manner fired a pistol from his door to frighten away persons who had been annoying him, and injured an innocent party; and *Smith* v. *Commonwealth,* 100 Pa. 324, in which it was held that one is guilty of an assault and battery who, in a frolic and with the design of frightening passengers, discharges a pistol into the floor of a car and wounds another in the foot. None of the cases cited by the court has, however, gone as far as *State* v. *Schutte* toward holding broadly that a negligent injury constitutes a criminal assault and battery. H. C. B.

POWER OF INTERSTATE COMMERCE COMMISSION TO COMPEL CONNECTIONS WITHIN THE BOUNDARIES OF A SINGLE SWITCHING DISTRICT.—The Pennsylvania Company had a system of railroad yards, team tracks, and sidings whereby it reached a great number of industries in and near New Castle, Pennsylvania. These were all included in what was termed a single switching district. The city was served by four other railroads, one of which (the Rochester Company) petitioned the Interstate Commerce Commission for an order compelling the Pennsylvania Company to accept from and deliver to the petitioner carload lots of freight at a point within such switching district where the tracks of the Pennsylvania Company and the petitioner had physical connection. Agreements for a similar interchange of traffic were in force between the Pennsylvania Company and the three other railroads serving the city. The physical connection of the Pennsylvania Company and one of such other roads was at the same point at which the road of the petitioner and the Pennsylvania Company were physically connected. The Interstate Commerce Commission granted the order, the Pennsylvania Company sought (by injunction), to prevent its being carried into effect, and from an order denying this injunction the case was carried to the Federal Supreme Court. The order denying the injunction was there affirmed. *Pennsylvania Company* v. *U. S. et al.,* (1915) 35 Sup. Ct. 370.

The question involved in the decision requires for its answer a discussion of the difference between the use of terminal facilities and the extending of switching privileges on the one hand, and the performance of a transportation service to a connecting carrier on the other. As appears from a perusal of the statutory provisions bearing on this matter, § 3 of the ACT OF 1887 TO REGULATE COMMERCE provides among other things that all common carriers subject to the Act shall provide equal facilities for the interchange of traffic between their respective lines. It however, adds the proviso that this shall not be construed to require any such carrier to give the use of its tracks or terminal facilities to a carrier engaged in like business. 24 STAT. AT LARGE 380. If, therefore, the service here sought to be compelled was in its essence a use of the terminal facilities of the appellant, it would be clearly within the proviso, and consequently illegal. It, therefore, became the duty of the court in upholding this order to show that it was

rather a special instance of affording transportation facilities which the statute compels the railroads to extend equally to all. In the lower court it was held without much argument that it was a transportation service, (214 Fed. 445). There was, however, a strong dissenting opinion. In this dissent some emphasis is placed upon the fact that the Interstate Commerce Commission in its report on the petition of the Rochester Company says, "that the terminal facilities of the defendants (appellants in the instant case) consist of depots, freight stations, yards, team tracks, and side tracks, together with spur tracks reaching twenty-six industries within the switching limits." *Buffalo, Rochester, etc. Ry. Co.* v. *Penna. Co.* 29 I. C. C. R. 115. It is to be noted that this enumeration included the very tracks and equipment, the use of which the petitioner was indirectly given by the present order. There would seem to be ground, therefore, for viewing the order as compelling a service essentially in the nature of the use of terminal facilities. In the instant decision there was a dissenting opinion by Chief Justice WHITE founded on practically the same reasons. In view of this situation it becomes necessary to determine what constitutes a use of terminal facilities as distinguished from a performance of a transportation service. In this connection those cases in which questions affecting the use of such facilities were involved with the interpretation of contracts affecting them, must not be considered; see *U. P. R. Co.* v. *Mason City, etc. R. Co.*, 222 U. S. 237.

At the common law a carrier had to accept for transportation goods delivered to it by a connecting carrier, *McMillan* v. *Chi., R. I. & P. Ry. Co.* (Ia.) 124 N. W. 1069. There was no duty at the common law, however, to provide physical connections to facilitate the interchange of traffic of this type, and consequently the first carrier had no right to compel the connecting carrier to accept goods at any other than the usual place provided therefor, *A. T. & S. F. R. Co.* v. *Denver & N. O. R. Co.*, 110 U. S. 667. Statutes compelling the making of physical connections for facilitating such interchange of traffic under reasonable circumstances, are not, however, such an extreme form of regulation as to come within the condemnation of the constitutional provision against taking property without due process of law, *Wis., Minn. & Pac. R. R. Co.* v. *Jacobson*, 179 U. S. 287; *R. R. Comm.* v. *M. C. R. Co.*, 168 Mich. 230. (Affirmed March 8, 1915, 35 Sup. Ct. 422). Such legislation is construed as a mere regulation of a duty that exists at common law. The extent to which such service can be compelled, and the correlative service of an interchange of traffic, hinges upon the definition of the term "transportation service." The proviso of 24 Stat. 380 lends emphasis to this aspect of the case. A state statute, and an order of a railroad commission thereunder, compelling a railroad to transport at reasonable rates carload lots of freight from points at which other lines connected with its lines physically to points on the side tracks and other tracks that would ordinarily be considered as parts of the terminal facilities of a railroad in a large city, was held to order a transportation service, although the service was restricted within the bounds of a single large city. In this case a distinction is made between this type of service and a mere switching service; and the case contains a strong intimation that if it had been the latter

the decision would have been different, and the order held invalid; *Grand Trunk Ry. Co.* v. *Mich. R. R. Comm.*, 198 Fed. 1003, 231 U. S. 457. Intrastate commerce merely was involved in that case, but the decision is indicative of a strong tendency to construe the term "transportation service" liberally and in the light of many circumstances. It was there held that the mere fact that the transportation commenced and ended within the bounds of a single city did not prevent that from being considered transportation which would clearly have been such if the termini had been different towns or cities. When the problem is one concerning interstate commerce the question is affected by the fact that amendments of the original act have defined "railroads" to include switches and terminal facilities, 34 Stat. 584. The act as amended extends to all terminal facilities and instrumentalities, *U. S.* v. *Union Stock Yards*, 226 U. S. 286. And the original act must be read in the light of such amendments, *Blair* v. *Chicago*, 201 U. S. 475. This in itself would seem to furnish reasons, therefore, for including in transportation services, services performed in connection with this equipment under certain circumstances.

It would be a mistake, however, to assume that the later amendments to the Commerce Act, and the decisions thereunder, have rendered entirely nugatory the proviso of § 3 of the Original Act. In as recent a case as *L. & N. R. Co.* v. *Stock Yards Co.*, 212 U. S. 132, an attempt was made by one railroad to compel another to accept from the former, at a point of physical connection with the latter, cars for delivery at the stock yards owned by the latter. The two roads were keen competitors in this type of business and the attempt was held invalid. The court there considered the real purpose of the former road to be to secure the use of the expensive terminal facilities of the L. & N. R. Co., and held that to compel that would be taking property without due process. In the instant case the fact that appellant extended the identical services to another road undoubtedly had weight in determining the decision of the court. The mere fact, however, that a railroad extends to one road the use of terminal facilities does not necessarily obligate it to extend the same facilities to others demanding it, *Little Rock etc. R. Co.* v. *St. Louis, S. W. Ry. Co.*, 63 Fed. 775; and the right to make reciprocal switching service contracts is still recognized, *Kentucky & I. Bridge Co.* v. *L. & N. R. Co.*, 37 Fed. 573. As was indicated above, the surrounding circumstances must be looked to to determine whether the arrangement is in its essence a use of terminal facilities or a mere transportation service by a connecting carrier. In the above cases the following are some of the important considerations that have been given weight: the existence of competition between the lines involved, the size of the switching district within which the arrangements are to be effective, the amount of convenience to shippers that would come from compelling the arrangement, the amount of inconvenience that would come to them from refusing them, and the fact that similar services have been extended to other lines under identical or nearly identical circumstances. Furthermore, in view of the fact that one of the main purposes of the ACT TO REGULATE COMMERCE and its various amendments is to prevent discrimination, if the effect of a refusal to compel the arrangements would be to cause such discrimination, it will undoubtedly be upheld as a

valid regulation. The main purpose of the proviso of § 3 of 24 Stat. 380 was undoubtedly to prevent arbitrary regulations from depriving one road of an advantage in a competitive situation over others. But where this conflicts with the main purpose of the statute, the larger public policy of preventing discrimination outweighs the purpose of the proviso and the former prevails. In short, in many of the cases that have already come up, and will undoubtedly arise in the future, involving problems of the sort that were present in the instant case, the question is fundamentally: which of two factors in public policy shall prevail where the two are in apparent or real conflict? The policy of preventing discrimination by the railroads, or that of maintaining the right of private property in respect to the facilities of transportation? H. R.

THE CONSTITUTIONALITY OF SEGREGATION ORDINANCES.—In the recent case of *Carey* v. *City of Atlanta,* 84 S. E. 456, the Supreme Court of Georgia has passed upon the difficult question as to the validity of segregation ordinances. The ordinance in question was passed by the city council under the general welfare clause of the city charter and was based upon the ordinance involved in the recent case of *State* v. *Gurry,* 121 Md. 534, 88 Atl. 546, 47 L. R. A. (N. S.) 1087. In that case, though arguing strongly in favor of the constitutionality of the ordinance as far as due process and "equal protection" were concerned, the law was declared invalid because the city lacked the power to pass it, and so no direct decision on the point of constitutionality was given. In *State* v. *Darnell,* 166 N. C. 300, 81 S. E. 338, 51 L. R. A. (N. S.) 332, a case which involved a practically similar ordinance as in *State* v. *Gurry,* and which was decided adversely on the same point, the court argues against the constitutionality of the act. These two decisions, together with *Town of Ashland* v. *Coleman,* a nisi prius report cited in 19 VA. LAW REG. 427, declaring such an ordinance constitutional, were the only authorities on such ordinances prior to the instant case, and the Virginia case was the only direct authority on the subject of their constitutionality. At first sight the instant case would seem to meet squarely the constitutional point raised in the prior cases, and to decide adversely to the Virginia case and the dicta in the *Gurry* case, but it seems that the cases can be distinguished because of vital differences in the ordinances. In the earlier cases the ordinances either were, first, restricted to blocks where all the residents were negroes or all whites and declaring it unlawful for a member of the opposite race to move into a block occupied entirely by members of the other race, or second, restricted to blocks where the majority of the residents were of one race or the other and declaring it unlawful for a member of the minority race to move in. The ordinance in the instant case goes further in that it makes provision not only for blocks in which the population is entirely of one race but the amendment provides for blocks which are "mixed" as follows,—"Sect. 1,—It shall be unlawful for any colored person to move into * * * any house * * * previously * * * occupied by white people and where white people are still living in houses * * * adjoining the same, without the consent of the white people in said